



Final Regulation Agency Background Document

Agency name	Alcoholic Beverage Control Board
Virginia Administrative Code (VAC) citation	3 VAC 5-70
Regulation title	Other Provisions
Action title	Reduction in Penalty for Certified Alcohol Server Training
Date this document prepared	June 30, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The purpose of this action is to carry out the mandate of Chapter 513 of the 2008 Acts of Assembly, which amends § 4.1-227 of the Code of Virginia and requires the Alcoholic Beverage Control Board to promulgate a regulation providing for a reduction in penalty in certain disciplinary actions against licensees, where the licensee can demonstrate that it has provided certified alcohol server training to its employees. The amended regulation encourages alcoholic beverage seller-server training.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On June 14, 2010, the Alcoholic Beverage Control Board took final action to adopt amendments to 3 VAC 5-70, Other Provisions.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 4.1-227, Code of Virginia, as amended by Chapter 513 of the 2008 Acts of Assembly, provides that the Alcoholic Beverage Control Board shall, by regulation, (1) designate the violations for which a waiver of a hearing and payment of a civil charge in lieu of suspension may be accepted for a first offense occurring within three years immediately preceding the date of the violation and (2) provide for a reduction in the length of any suspension and a reduction in the amount of any civil penalty for any retail licensee where the licensee can demonstrate that it provided to its employees alcohol server training certified in advance by the Board.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The board has determined that this action promotes the public safety and welfare by insuring that licensees who do not comply with the regulations governing the sale of alcoholic beverages are appropriately punished, while saving the agency the cost of an administrative hearing.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The regulatory action amends 3 VAC 5-70-210 to provide for a lesser suspension period and a lesser civil penalty in lieu of suspension for licensees charged with a first violation within three years of sale of alcoholic beverages to an underage or intoxicated person or allowing consumption of alcoholic beverages by an underage or intoxicated person, if the licensee can demonstrate that it has provided the employee responsible for the violation alcohol server training certified by the board within the 12 months immediately preceding the violation. A new provision added to the section will set out the process for certification of alcohol server training courses. Additional amendments will clarify that the ability to waive hearing and accept a penalty under this section does not apply to licensees charged with multiple violations, and deletes certain violations currently included in this section which the board feels are inappropriately listed.

Issues

Please identify the issues associated with the proposed regulatory action, including:
 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
 3) *other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

The primary advantage of the proposed action to the public is that it provides mitigation of punishment for businesses who provide alcohol seller/server training to their employees. It also provides the advantage to agency of reducing costs by allowing certain violations to be handled without the expense of a hearing. The only disadvantage to the public is that five violations currently allowed to be handled without a hearing for first-time violators will now require a hearing. There are no disadvantages to the Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response

No public comment was received.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
3 VAC 5-70-210		Any licensee charged with a first violation of specified regulations or statutes within 3 years may waive hearing and accept either a prescribed license suspension or a set civil charge in lieu of suspension.	<p>The amendments clarify that the ability to accept a prescribed penalty and waive hearing applies to single charges only. The licensee must have no other pending charges. The existence of multiple charges indicates a larger problem than a single first violation, and the Board feels such situations should be dealt with through the hearing process.</p> <p>Keeping unauthorized, untaxed alcohol on the licensed premises, allowing gambling on the licensed premises, failure to keep records, and failure to maintain the mixed beverage food ratio will be removed from the schedule of violations for which hearings may be waived for first offenses. The Board feels that these violations are more serious violations which should be dealt with through the hearing process.</p> <p>If a licensee is charged with a first offense of sale of alcoholic beverages to a person at least 18, but under 21, sale to an intoxicated person, or allowing consumption of alcoholic beverages on the licensed premises by such persons, and the licensee can demonstrate that it has provided alcohol seller/server training to the employee responsible for the violation within the 12 months immediately preceding the violation, the licensee may waive hearing and accept a lesser period of license suspension or a lesser civil penalty in lieu of suspension. The Board believes this penalty mitigation will encourage licensees to conduct seller/server training.</p>

Enter any other statement here

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5)

the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The regulation contains no compliance or reporting requirements, design or operational standards. It will merely provide additional options for licensees to respond to violations of alcoholic beverage laws or regulations without the expense of a hearing.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not anticipated that this regulatory action will have any effect on the institution of the family or family stability.